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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

EUGENIA HORNE,)	
)	
)	
Appellant,)	IPC NO. 00-12
)	
vs.)	
)	
IDAHO STATE UNIVERSITY,)	DECISION AND ORDER ON
)	PETITION FOR REVIEW
)	
Respondent.)	
_____)	

THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on August 14, 2001. Petitioner, Eugenia Horne (Horne) was represented by Nick L. Nielson, Respondent, Idaho State University (University) was represented by John R. Goodell. The petition for review involves the hearing officer's decision dated January 9, 2001. **WE AFFIRM.**

I.

BACKGROUND AND PRIOR PROCEEDINGS

A. Facts.

Horne has a Bachelor of Science degree from Cal State Northridge in Business Administration, obtained in 1986. She also earned an MBA from Idaho State University in 1994 and has recently passed her CPA exam. Horne had been a State of Idaho employee since 1990

and began working at the University as a senior accountant in October 1993. She held this position until her termination on March 2, 2000.

Norma Hamm was Horne's supervisor for her first five (5) years at the University and Steve Peterson (hereinafter "Peterson") became her supervisor in June 1998. Horne's annual performance evaluations were satisfactory, with suggestions for improvement.

On April 26, 1999, Peterson, as Horne's supervisor, prepared his first annual performance evaluation of her, covering the period of time April 19, 1998 to April 18, 1999. He gave Horne a satisfactory rating, but indicated that the quality of her work was unreliable and she had difficulty meeting deadlines. He further noted that her oral communication skills were poor and she was unwilling to discuss projects and ask and answer questions regarding her work. Peterson planned to meet with Horne on a periodic basis to discuss assignments, completion dates, and anticipated problems and issues.

Horne was very upset with the performance evaluation and submitted a written response to the evaluation. She felt she was effectively placed on probation unfairly and without timely warning of what she felt were immaterial deficiencies in her job performance.

Peterson conducted a follow-up meeting with Horne on April 30, 1999. During that meeting, Horne became upset, slammed a pad of paper down on Peterson's desk, and abruptly left the meeting despite Peterson's directives to the contrary. Horne contends Peterson was intimidating and verbally and physically threatening to her, in general, and that at this meeting he had put his hands on the table and was looming over her. Horne admitted becoming angry and walking out of the meeting because she was supposed to get a five (5)-year employee certificate soon thereafter and was studying for her CPA exam. Mr. Peterson had denied her request to defer the meeting.

Peterson prepared a follow-up letter dated May 3, 1999 advising Horne that her refusal to accept a reasonable and proper assignment from an authorized supervisor and insubordination constitute conduct unbecoming a state employee or conduct detrimental to good order and discipline in the Department, and such conduct is also prohibited by the Faculty/Staff Handbook.

Horne sent a written response to Peterson's letter on May 14, 1999, to Dr. Robert Pearce, the Vice President of Financial Services, stating her opinion that she had, in essence, been placed on probationary status and Peterson was trying to set her up for later termination.

Peterson resigned from his position around June 1999 and was replaced by Roger Egan (hereinafter "Egan") before the end of 1999. In addition, in late June 1999, Ken Prolo (hereinafter "Prolo") became Vice President for Financial Services after Dr. Pearce resigned. Prolo was concurrently the Director of Human Resources until the summer of 2000.

On August 11, 1999, Horne fell or passed out while going up a stairway at the University. She suffered injuries to her face and was transported to Bannock Regional Medical Center. Prolo accompanied her and advised the medical staff of a previous fainting episode at work, occurring in January 1999. The treating physician, Dr. Woodhouse, reported Horne's condition to the Department of Transportation, later resulting in a suspension of her driver's license. This action infuriated and frustrated Horne and, on September 15, 1999, she placed a telephone call from her mother's house in Nampa to the Family Practice Residency Clinic on the University campus where Dr. Woodhouse worked. During this phone call Horne threatened to harm herself and others. In fact, Horne does not deny saying "You people are driving me crazy. I don't know when I'm going to hit the point where I take everybody out with me."

At the time of this call, Horne was on medical leave based upon her fall at the University on August 11, 1999. Both Horne and her mother confirmed that Horne was so angry during that

telephone call to the Clinic on September 15, 1999 that Horne broke the telephone. The Family Practice Residency Clinic, a subagency of the University, reported the telephone threats to Campus Security. The Nampa Police were also contacted and performed a welfare check on Horne at her mother's home.

Prolo attempted to schedule a meeting with Horne in Nampa or Boise to discuss the telephone call to the Clinic and to get her side of the story regarding the call, but Horne refused to meet with him. Consequently, Prolo sent a letter, dated September 17, 1999, notifying Horne that she was currently denied access to Idaho State University Campus and the Family Practice Residency Clinic.

Horne returned to work December 13, 1999. On January 24, 2000, Horne called the Department of Transportation regarding reinstatement of her driver's license from her office at the University. Horne's telephone conversation with the Department of Transportation became very loud and angry. Horne admitted she was angry and speaking loudly in her "stage" voice, which she uses to allow people to hear her better. The anger and tone of Horne's conversation frightened several people outside the office area. In fact, Prolo received complaints from co-workers regarding this January 24, 2000 telephone call.

Egan, Horne's direct supervisor, scheduled a meeting with Horne to discuss the angry telephone conversation of January 24, 2000. Donna Hillard (hereinafter "Hillard"), Associate Director of Human Resources, also attended this meeting which occurred on January 31, 2000. At this meeting (documented by letter of February 1, 2000), while recognizing Horne had frustrating personal issues to resolve, Egan advised her that her conduct had frightened other employees, making it difficult for her to work with other employees. Egan further reminded Horne that the Faculty/Staff Handbook allows for disciplinary action for insubordination or

conduct unbecoming a state employee or conduct detrimental to good order and discipline in the Department. She was reminded that this was the second warning she received for conduct of this type. Horne was advised that any further behavior of that nature would not be tolerated and would result in her dismissal. The incident of February 1, 2000, discussed below, occurred the very next day.

On February 1, 2000, Prolo asked his secretary to schedule a meeting with Horne to discuss the angry outbursts and employees' concerns. Prolo was in Boise at the time. When the secretary contacted Horne, Horne became angry and demanded to know what the meeting was about. The secretary did not know. About ten (10) minutes thereafter, Horne stormed into the Financial Services Office angry and demanding, again, to know what the meeting was about. She also demanded to speak with Prolo immediately and this was denied. Prolo's secretary expressed her fright and concern regarding Horne's anger. Horne contends she only used her "stage" voice with the secretary. Nevertheless, just as it did in the January 24, 2000 phone call, use of this "stage" voice caused the secretary fright and concern over her apparent anger. Horne then stormed out of the Financial Services Office and proceeded to the Office of Human Resources and the President's office and raised a commotion there.

On February 2, 2000, Horne filed a grievance. The grievance acknowledged the meeting on January 31, 2000 with Egan and Hillard. Horne expressed concern that she was being treated with bias and discrimination. She requested the University remove any adverse documentation from her personnel file or have the file sealed. She also asked for the possibility of being placed on paid disability leave, or alternatively for reassignment to a position totally unassociated with Internal Audit, Human Resources, and Prolo.

On February 3, 2000, Prolo held a grievance meeting with Horne and Hillard. Horne's father was also present. Horne questioned why Prolo did not follow the chain of command and Prolo indicated he was her second line manager and it was entirely appropriate for them to discuss the meeting that occurred between Egan and Horne a few days earlier regarding the telephone call of January 24, 2000. Horne expressed her feelings that the University had destroyed her driving record, her medical records, her credit rating, and her employment record.

By memo dated February 9, 2000, Hillard prepared a statement regarding Horne's conduct in the Office of Human Resources on February 1, 2000. Hillard related that Horne was visibly agitated and demanding loudly to know why Prolo wanted to meet with her. Hillard related that Horne was out of control and very angry. Hillard expressed fear of Horne and what Horne might be capable of doing in her anger.

By letter dated February 10, 2000, Egan submitted a summary to Prolo of the conversation he had with Horne on January 31, 2000. Egan related to Horne that her angry telephone conversation on January 24, 2000 was inappropriate and further conduct would subject her to discipline. His letter further related that the very next day, February 1, 2000, Horne became upset because Prolo requested a meeting and she made angry demands in two University departments. Egan related that Horne's actions on January 24 and February 1, 2000 had severely injured her credibility as a professional, objective auditor, which would impair his ability to use her effectively in conducting audits anywhere in the Administration Building.

On February 10, 2000, another meeting was conducted with Prolo, Hillard, Horne, and Horne's mother. During this meeting, very little was accomplished. Horne refused to answer direct questions about the incidents, but instead, was threatening, raising her voice, slamming her hands on the table, and raising a book over her head. Those present could not calm her down.

Horne then went to meet with Egan and Hillard. She was still angry and upset and that meeting lasted only a few minutes, with her shouting and slamming the door as she left. Egan recommended to Prolo that Horne be dismissed with cause. Horne was sent home on paid administrative leave pending further notice.

Prolo notified Horne, by letter dated February 11, 2000, of the contemplated action of dismissal. Termination was contemplated based upon Idaho Code § 67-5309(n)(5) and Idaho Division of Human Resources Rule 190.01.e (IDAPA 15.04.01.190.01.e) (hereinafter Rule 190.01.e) for insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the Department. Horne submitted a written response through her attorney, Nick Nielson, by letter dated February 24, 2000. By letter dated March 2, 2000, Dr. Richard Bowen, the President of Idaho State University, dismissed Horne from classified employment with the University pursuant to Rule 190.01.e. She was dismissed for violating Idaho Code § 67-5309(n)(5) and Division of Human Resources Rule 190.01.e.

The representatives of the University testified that as an employer, they must be concerned about workplace violence, and that they felt they had no option but to terminate Horne. Horne made it very difficult to discuss the various incidents, she had received various warnings, her co-workers were afraid of her and her credibility was compromised.

B. Appeal to Personnel Commission.

Horne filed a timely notice of appeal of employment dismissal to the Commission. The appeal was heard on October 12, 2000.

Following an evidentiary proceeding, the Hearing Officer determined that the University established, by a preponderance of the evidence, that Horne engaged in several separate incidents of uncontrolled anger and threatening conduct directed towards a variety of individuals.

Accordingly, the Hearing Officer issued findings of fact and conclusions of law ruling that Horne had engaged in misconduct justifying termination of her employment and was properly dismissed pursuant to Idaho Code § 67-5309(n)(5) and Rule 190.01.e (insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department).

II.

ISSUES

1. Did the hearing officer err in her determination that the University proved by a preponderance of the evidence that Horne violated Idaho Code § 67-5309(n)(5) and Rule 190.01.e?
2. Were the hearing officer's findings of fact supported by substantial competent evidence?

III.

STANDARD OF REVIEW

The standard of review on disciplinary appeals to the Commission is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 29.01.01.201.06 [now IDAPA 15.04.01.201.06]. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and . . . [Rule] 190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify

the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Department of Welfare, IPC No. 94-03 (February 21, 1996), *aff'd*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

IV.

ANALYSIS

The questions before the Commission are whether the University established proper cause for Horne's termination by a preponderance of the evidence and whether the hearing officer's findings of fact are supported by substantial, competent evidence. These issues are inextricably entwined because they involve issues of credibility and proof.

A. Proof of Cause for Discipline.

The hearing officer rendered detailed findings of fact, reviewing the evidence introduced in support of Horne's misconduct. Despite Horne's assertions to the contrary, the hearing officer evaluated that evidence in light of Horne's evidence regarding the factual circumstances that formed the backdrop for the events that transpired. The hearing officer determined there was sufficient evidence to support Horne's dismissal pursuant to Idaho Code § 67-5309(n)(5) and Rule 190.01.e. Further, the Commission finds that the hearing officer's findings of fact and conclusions of law are supported by substantial, competent and credible evidence.

Reviewing the entire record, including the briefs of the parties, the Commission sees no reason to reverse the hearing officer's decision upholding Horne's dismissal from state employment for cause. The Commission does not find credible her assertions that the University provoked her angry outbursts or treated her in a biased and discriminatory manner. She only offers her opinions in support of such assertions.

Instead, the substantial and competent evidence in the record establishes at least four (4) separate instances of misconduct, and at least three (3) warnings from her superiors that such misconduct would not be tolerated and would be grounds for dismissal. Apparently unable to control her temper, Horne refused to conform her behavior to required standards of conduct, thereby compromising her ability to work with others and affecting her usefulness in her job capacity.

Horne contends the hearing officer's findings of fact are not supported by substantial and competent evidence because the hearing officer did not effectively consider Horne's version of the facts in so rendering. This is an unsupported assumption, apparently based upon the hearing officer's lack of mentioning every factual assertion Horne made in the record.

The hearing officer did consider Horne's various factual contentions in her findings of fact. The Hearing Officer noted that Horne "claims that the University's concerns were over-inflated" and her contentions that "her angry outbursts were provoked by the University" and that "her supervisors were biased against her." *Findings of Fact, Conclusions of Law and Preliminary Order, IPC No. 00-12, 11* (January 9, 2001). The hearing officer reached her decision after careful and thorough analysis of the evidence. The hearing officer had an opportunity to observe all of the witnesses and to receive testimony under oath and found that there was no substantial evidence to support Horne's assertions in her defense, other than her own opinions.

An issue that is central to this discussion is that of credibility. The Commission has previously held that credibility issues are within the province of the hearing officer.

Where credibility of witnesses is an issue, the Commission will usually rely on the determination of the hearing officer who was in a position to judge the credibility and relative credibility of the witnesses.

Wikse v. Dep't of Health and Welfare, IPC No. 96-12 (1998).

This approach has been upheld by the Idaho Court of Appeals that stated:

[W]here credibility is crucial and where first-hand exposure to the witnesses may strongly affect the outcome, we think the Personnel commission should not override the hearing officer's impressions unless it makes a cogent explanation of its reasons for doing so.

Dep't of Health and Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

In this instance, the hearing officer, who had the benefit of the parties' witnesses' appearance and testimony before her, made factual determinations regarding weight and credibility of the testimony and witnesses, in conjunction with the exhibits and briefs which make up the record in this case. Horne urges the Commission to believe her side of the story after the hearing officer has already so considered at the hearing below. Horne has failed to provide any meaningful reason why the Commission should disregard the findings of the hearing officer. Horne's disagreement does not change the fact that there is substantial and competent evidence supporting the University's dismissal of Horne.

B. Choice of Discipline.

Horne further argues that the hearing officer failed to address the issue of whether less evasive action could have and/or should have been taken by the University. This argument is without merit.

As specified by statute (Idaho Code § 67-5309(n)) and rule (IDAPA 15.04.01.190.01), any of the listed causes can justify discipline. Disciplinary choices include suspension, termination, and demotion. In disciplinary matters, the agency has the choice as to the type of discipline it wishes to impose. Webster v. Dep't of Health and Welfare, IPC No. 96-14, 1997 IPC Reports 67, 74. In this case the University chose termination. Where substantial evidence supports the hearing officer's determination that the University proved, by a preponderance of

the evidence, that it had “proper cause” to impose discipline, the Commission will not substitute its judgment with respect to the University’s choice of discipline. *See Id.*

V.

CONCLUSION

For the reasons stated above, the hearing officer's determination that Horne was properly terminated is AFFIRMED. Commissioner Clarisse Maxwell did not take part in this decision.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this ____ day of September, 2001.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

Mike Brassey, Commission Chair

Ken Wieneke, Commissioner

Don Miller, Commissioner

Pete Black, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON PETITION FOR REVIEW in *Horne v. Idaho State University*, IPC No. 00-12, was delivered to the following parties by the method stated below on the ____ day of September, 2001.

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